THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM
THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

Appellate Case No. 2020-001283

Public Service Commission Docket No. 2019-290-WS

In Re: Application of Blue Granite Water Company for Approval to Adjust Rate Schedules and Increase Rates

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FINAL BRIEF OF RESPONDENT SOUTH CAROLINA OFFICE OF REGULATORY STAFF

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[1] Pursuant to S.C. Code Ann. § 58-4-50, "[o]n appeal, the Office of Regulatory Staff does not represent the Commission." ORS does not address the issues that Blue Granite assigned numbers I, II, III, IV, VIII and IX as presented in its brief.

STATEMENT OF THE CASE

This appeal stems from the rulings of the Public Service Commission of South Carolina ("PSC" or "Commission") in Docket No. 2019-290-WS, the Application of Blue Granite Water Company ("Blue Granite," "Utility," or "Company") for Approval to Adjust Rate Schedules and Increase Rates.

Blue Granite filed its Application on October 2, 2019, requesting a total revenue increase of $11,589,537 which reflected a proposed rate increase of 49.18 percent. (Application, Schedule B at R. p. 483) (R p. 874, lines 12-13). The Commission received and granted petitions to intervene from Forty Love Point Homeowners' Association ("Forty Love"); the Building Industry Associations of South Carolina; the South Carolina Department of Consumer Affairs ("Consumer Advocate"); the Town of Irmo; James S. ("Jim") Knowlton; Stefan Dover; and York County, South Carolina. *See* (Commission Order Nos. 2020-22; 2020-21; 2020-20; 2020-19; 2019-849; 2019-799; 2019-746) (R. pp. 227-228, 235-239).

During the months of January, February, and March 2020, shortly before Governor Henry McMaster issued Executive Order 2020-08, declaring a State of Emergency in South Carolina due to the 2019 Novel Coronavirus (Covid-19), the Commission held six (6) night hearings to receive testimony from Blue Granite's affected customers. *See* (Commission Order Nos. 2019-830 (Greenville), (R. p. 233); 2019-829 (Union), (R. p. 232); 2019-827 (Lexington), (R. p. 231); 2019-825 (York), (R. p. 229); 2019-831 (Anderson[2]), (R. p. 234); 2019-826 (Irmo), (R. p. 230)); (R. pp. pp. 425-428). More than 500 people attended the Blue Granite night hearings, with over 150 of those individuals signing up to testify. *See* (R. pp. 1161-1199) (R. pp. 1208-1209) (R. pp. 1221-

[2]On February 6, 2020, due to severe inclement weather, the Public Hearing in Anderson, South Carolina was cancelled.

1243). Even before the hardships imposed on the public by Covid-19 fully emerged, the magnitude of Blue Granite's requested rate increase was an issue of almost universal concern at all of the night hearings. The issue of flat sewer rates, under which customers have no ability to control their monthly bills, was also one of the most frequent and recurring concerns to which customers testified. The contested case merits hearing began on February 26, 2020 and ended March 2, 2020, eleven days before Governor McMaster issued Executive Order No. 2020-08, declaring a State of Emergency in South Carolina due to Covid-19. Blue Granite, the ORS, the Consumer Advocate, York County, Forty Love, Knowlton, and Dover presented witness testimony.

The Commission issued Order No. 2020-306 on April 9, 2020. (R. pp. 242-390). On April 29, 2020, Blue Granite filed a Petition for Rehearing or Reconsideration with the Commission, and ORS filed a Petition for Clarification and Rehearing/Reconsideration. (R. pp. 751-781, 782-791). On May 28, 2020, the Commission voted and issued a directive addressing the Petitions filed by Blue Granite and ORS, largely maintaining its initial order. The Commission subsequently issued its Order on Reconsideration on September 23, 2020, Order No. 2020-641. (R. pp. 393-410).

On August 18, 2020, the Commission issued Order No. 2020-549, in which the Commission moved for its Clerk's Office to schedule oral arguments on the request for clarification filed by the Consumer Advocate regarding the staying of rates put in effect by Blue Granite under bond. On September 16, 2020, the Commission issued a directive in which it denied the Petition for Reconsideration of Commission Order No. 2020-549 filed by Blue Granite. In Order No. 2020-306, the Commission found that it would be unreasonable to impose the magnitude of increase in customers' rates that would result from approving Blue Granite's requested total revenue increase of $11,589,537. (R. pp. 242-390).

On September 25, 2020, Blue Granite appealed Commission Order Nos. 2020-641, 2020-549, the Directive issued on September 16, 2020, and Order No. 2020-306.

In this brief, ORS addresses three (3) issues that the Company appeals to this Court for consideration and on which ORS respectfully submits this Court should affirm the Commission.

First, regarding the Company's proposed storm recovery costs, the Commission found that a normalizing adjustment to the Company's test year storm recovery costs based on the Company's adjusted ten (10) year average of storm recovery costs was both reasonable and accurately reflected Blue Granite's expected future storm costs. *See* (Commission Order No. 2020-306, R. p. 252). This specific method of normalization applied in this case has been previously approved and adopted by the Commission. *See* (R. p. 1101, line 23-p. 1102, line 3); (Commission Order No. 2020-306, R. p. 307).

Second, the Commission found the revenue adjustment recommended by ORS to disallow the costs of the upfit to Blue Granite's new downtown Greenville office in the amount of $495,206 was just and reasonable. (Commission Order No. 2020-306, R. p. 248). The substantial evidence placed in the record indicated that Blue Granite's decision to move its offices was attributable to adverse legacy brand issues caused by the utility and was part of its rebranding. Notably, the Utility previously committed that it would not seek recovery from its customers of costs associated with rebranding efforts resulting from its decision to rename Carolina Water Service, Inc. to Blue Granite. *See* (Commission Order No. 2020-306, R. p. 248).

Finally, the Commission determined that it was appropriate, just and reasonable based on the substantial evidence of record to continue to apply the previously approved ten percent (10%) threshold for recovery of non-revenue water established and set in Blue Granite's prior rate case, which was uncontested by the Utility. *See* (Commission Order 2020-306, R. p. 246). The

Commission found that Blue Granite's initially proposed approach of recovering all non-revenue water from customers was unreasonable, unbeneficial to the customer, and inadequately incentivized Blue Granite to take steps to reduce non-revenue water losses. In addition, the Commission concluded that Blue Granite failed to provide sufficient justification for its revised non-revenue water loss proposal it first introduced in its rebuttal testimony to double the threshold from 10 percent to 20 percent, and did not provide subdivision-specific evidence-based proposals for the Commission to consider even though Blue Granite advocated for this approach. *See* (Commission Order No. 2020-306, R. pp. 246, 247).

STANDARD OF REVIEW

The standard of review applicable to decisions of the Commission is set forth in the South Carolina Administrative Procedures Act:

> The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions on fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> (a) in violation of constitutional or statutory provisions;
> (b) in excess of the statutory authority of the agency;
> (c) made upon unlawful procedure;
> (d) affected by other error of law;
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380.

"The Public Service Commission is recognized as the 'expert' designated by the legislature to make policy determinations regarding utility rates; thus, the role of a court reviewing such decisions is very limited." *Patton v. S.C. Pub. Serv. Comm'n*, 280 S.C. 288, 291, 312 S.E.2d 257, 259 (1984). The Commission sits as the trier of facts, akin to a jury of experts. *Southern Bell Tel.*

& Tel. Co. v. Pub. Serv. Comm'n of S.C., 270 S.C. 590, 597, 244 S.E.2d 278, 282 (1978). Additionally, "[t]his Court employs a deferential standard of review when reviewing a decision from the Commission and will affirm the Commission's decision if it is supported by substantial evidence." *S.C. Energy Users Comm. v. S.C. Electric & Gas,* 410 S.C. 348, 353, 764 S.E.2d 913, 915 (2014) (quoting *S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n*, 388 S.C. 486, 490, 697 S.E.2d 587, 589-90 (2010)). This Court is without authority to set aside an agency's judgment on a factual issue where there is substantial evidence of record to support the agency's decision. *Hamm v. S.C. Pub. Serv. Comm'n,* 294 S.C. 320, 323, 364 S.E.2d 455, 456 (1988) (citation omitted).

"[T]he party challenging a PSC order must establish that (1) the PSC decision is not supported by substantial evidence and (2) the decision is clearly erroneous in light of the substantial evidence in the record." *Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of S.C.*, 359 S.C. 105, 109, 597 S.E.2d 145, 147 (2004) (citations omitted). "Because the Commission's findings are presumptively correct, the party challenging the Commission's order bears the burden of convincingly proving the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence of the record as a whole." *S.C. Energy Users Comm. v. S.C. Pub. Service Comm'n*, 388 S.C. at 491, 697 S.E.2d at 590. "In applying a substantial evidence test, an appellate court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, unless its findings or conclusions are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." *Friends of the Earth v. Pub. Serv. Comm'n of S.C.*, 387 S.C. 360, 366, 692, S.E.2d 910, 913 (2010) (citations omitted).

"A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." *Deese v. S.C. State Bd. of Dentistry,* 286 S.C. 182, 184-5, 332 S.E.2d 539, 541 (Ct. App. 1985). "An abuse of discretion occurs where the trial court is controlled by an error of law or where the Court's order is based on factual conclusions without evidentiary support." *Smith v. S.C. Ret. Sys.,* 336 S.C. 505, 523, 520 S.E.2d 339, 349 (Ct. App. 1999).

SUMMARY OF ARGUMENT

The South Carolina General Assembly has tasked the Commission with the responsibility to ascertain and fix just and reasonable rates. *See* S.C. Code Ann. § 58-5-210. The determination of what rate is just and reasonable requires a detailed evaluation of the applicant utility's rate increase request contrasted with considerations of the burden that the utility's increased rates would impose on its customers. The Commission must exercise a dual responsibility of providing the utility with an opportunity to earn a reasonable return on the property it has devoted to serving the public, on the one hand, and protecting customers from rates that are so excessive as to be unjust or unreasonable, on the other hand, by "(a) [n]ot depriving investors of the opportunity to earn reasonable returns on the funds devoted to such use as that would constitute a taking of private property without just compensation[, and] (b) Not permitting rates which are excessive." *Southern Bell Tel. & Tel. Co.*, 270 S.C. at 605, 244 S.E.2d at 286 (Ness, J., concurring and dissenting).

This Commission analysis is complex in the best of circumstances; however, with the advent of the global Covid-19 pandemic and the financial stressors that the pandemic placed upon Blue Granite's customers made the threshold of just and reasonable particularly salient. While the central issue before the Commission in every rate proceeding is to ensure that the utility recovers,

and its customers pay, just and reasonable rates, the inevitable tension between the utility and its customers is compounded in this situation by the current global pandemic.

But independent of Covid-19, the increased rates sought by Blue Granite remain unjust and unreasonable for its customers. The components of Commission Order Nos. 2020-306 and 2020-641, detailed below, are supported by substantial evidence in the record and are just and reasonable.

Blue Granite has failed to carry its burden of demonstrating that the Commission's Orders were clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.

I. Storm Recovery Cost Expense

Relying upon the substantial evidence in the record, the Commission normalized Blue Granite's historically experienced yearly storm costs and set the Company's prospective recovery for storm restoration costs at a rate equal to the Company's ten-year average of storm costs, after removing the high and low values. The Commission adopted a commonsense approach based on record evidence to normalize the storm recovery adjustment consistent with established precedent from this Court.

II. Disallowance of Headquarters Office Rent Expenses and Upfit Costs

The Commission's approval of an adjustment of $495,206 to eliminate certain rebranding related costs Blue Granite incurred to upfit the space it leased for its new and relocated headquarters in Greenville, South Carolina, is based on substantial evidence in the record. The Commission correctly concluded Blue Granite's customers should not have to pay the costs to upfit the new Greenville office, given that the Company acknowledged the move was part of its rebranding efforts to address Company created legacy brand problems and Blue Granite's own

representation to its customers and the Commission that its rebranding expenses would not be charged to its customers. (Commission Order No. 2020-306, R. p. 298).

III. Disallowance of Non-Revenue Water Expense

The Commission appropriately adopted ORS's recommended adjustments to limit Blue Granite's recovery of non-revenue water from its customers to 10 percent of the total amount of non-revenue water. (R. p. 1118, line 21-p. 1119, line 2). Non-revenue water is water Blue Granite generates itself or purchases from a third party to sell to its customers that is not accounted for through customers' billed usage. It is water Blue Granite cannot, and did not, establish on the record that its customers actually used or consumed. The Commission's decision was consistent with its Order in Blue Granite's prior rate case, which Blue Granite did not oppose or appeal. (Docket Number 2017-292-WS, Order No. 2018-345(A), R. p. 132); (R. p. 1107, lines 9-12) (R. p. 895, lines 10-15). The Commission appropriately concluded that permitting recovery of all non-revenue water was unreasonable and would not adequately incentivize Blue Granite to take steps to reduce the adverse impact of nonrevenue water on its ratepayers. (Commission Order No. 2020-306, R. p. 246). If Blue Granite was allowed to recover all non-revenue water, the utility is not incentivized to identify and address the cause of the lost water. (*Id*).

In response to the ORS rebuttal testimony, Blue Granite changed its original position in its Application and proposed individual subdivision-specific goals be set or an application of a 20 percent threshold. The Commission exercised its discretion appropriately based on the record evidence in declining to adopt either of Blue Granite's conflicting proposals.[3] (*Id.* at R. pp. 246-247).

[3] The pages from Commission Order No. 2020-306 cited here appear in the Executive Summary of that Order. The Commission stated the Executive Summary shall not be controlling if it conflicts with the remainder of the Order. (Commission Order No. 2020-306, R. p. 243). Because the

ARGUMENT

South Carolina Code Ann. § 58-5-210 provides, "[t]he Public Service Commission is hereby…vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State, together with the power, after hearing, to ascertain and fix such just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed, observed and followed by every public utility in this State and the State hereby asserts its rights to regulate the rates and services of every 'public utility' as herein defined." The Commission sets just and reasonable rates by balancing the interests of ratepayers with the right of the utility to earn a fair return. *S.C. Cable Television Ass'n v. Pub. Serv. Comm'n of S.C.*, 313 S.C. 48, 51, 437 S.E.2d 38, 39 (1993) (citations omitted). "In fulfilling its obligation to balance the interests of a public utility and the often-competing interests of the intervenors in a complex rate proceeding, the Commission is empowered to utilize its discretion and expertise in setting 'just and reasonable rates.'" *Parker v. S.C. Pub. Serv. Comm'n*, 281 S.C. 22, 24, 314 S.E.2d 148, 149 (1984) (citations omitted). The "[r]easonableness of rates should be determined by an evaluation of the utility's holdings and obligations and the return which the utility realizes from the rates ….The focus is upon the financial condition of the utility, particularly whether the return realized from the rates is so low as to be confiscatory to the utility or so high as to be unduly burdensome to the utility's customers." *Mims v. Edgefield Cnty. Water & Sewer Auth.*, 278 S.C. 554, 556, 299 S.E.2d 484, 486 (1983) (citations omitted). Moreover, the Commission is "entitled to create incentives for utilities to improve their business practices." *Utilities Servs. of S.C., Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 105, 708 S.E.2d 755, 760 (2011).

Commission's discussion of the non-revenue water issue later in its Order does not conflict with the Executive Summary, the latter can be relied upon and cited here.

It is through the lens outlined above that this case must be viewed. The Commission may not arbitrarily veer from its own established precedent in making decisions regarding costs to be passed onto the Companies' South Carolina customers and must also evaluate the specific facts and circumstances of the case before it. *Heater of Seabrook, Inc. v. Pub. Serv. Comm'n*, 332 S.C. 20, 26, 503 S.E.2d 739, 742 (1998); *see 330 Concord Street Neighborhood Ass'n v. Campsen*, 309 S.C. 514, 517, 424 S.E.2d 538, 540 (Ct. App. 1992). The Commission must balance competing interests by setting rates that are just and reasonable to both the utility and its customers while ensuring that the set rates are not "unduly burdensome to the utility's customers." *Mims*, 278 S.C. at 556, 299 S.E. 2d at 486. In the adjustments discussed below that is exactly what the Commission did. Accordingly, as set forth below, the Court should affirm the Commission's rulings.

I. The Commission Appropriately Normalized the Utility's Storm Recovery Expenses Using an Adjusted 10-Year Average of Storm Costs Rather than a 5-Year Average of Storm Costs.[4]

The Commission's decision to set the Company's prospective recovery for storm restoration costs equal to the Company's 10-year average of storm costs after removing the high and low values is supported by the record evidence, is reasonable and should be affirmed. This normalizing adjustment is one of the most straightforward in the entire case and is supported by the substantial evidence of record.

The "ORS reviewed the previous 10 years . . . of storm restoration costs the Company incurred," excluding storm costs for which "the Company was granted deferred accounting treatment[.]" (R. p. 1103, lines 9-12). "Due to fluctuations in annual storm costs," ORS witness Brandon Bickley recommended "eliminating the expenses in the highest and lowest years and to

[4] While this is the first argument in ORS's Brief, it corresponds to the fifth argument made by Blue Granite Water Company in its Brief.

use an eight-year average expense level." (R. p. 1103, lines 13-14). Witness Bickley testified that, applying this method, "ORS found the long-term average yearly storm costs to be $28,320.51." (R. p. 1103, lines 16-17). The Company initially proposed to recover its test year level of storm costs of $51,802 on a going-forward basis. (R. p. 1103, line 6). In rebuttal testimony, the Company changed its position and proposed a downward normalizing adjustment to recover its 5-year average of storm costs of $42,494. (R. p. 1058, lines 3-5). The Company recommended a 5-year average rather than a 10-year average because "the Company has experienced consistently higher levels of storm recovery costs" in the last 5 years. *See* (R. p. 1058, lines 1-2).

The Commission reasonably adopted ORS's evidence-based recommendation. As this Court has recognized, and as the Company acknowledges in its brief, "[w]here an unusual situation exists showing that the test year amounts are atypical, the Commission should adjust the test year data." *Parker v. S.C. Pub. Serv.* Comm'n, 280 S.C. 310, 312, 313 S.E.2d 290, 292 (1984) (emphasis and citation omitted). It is undisputed in the record that storm costs are "volatile," subject to "fluctuations" and "significant outliers." (R. p. 1060, line 24) (R. p. 1105, line 4); *see also* (R. p. 1060) (table of annual storm costs for years 2010-2019). Accordingly, a normalizing adjustment for storm costs was reasonable. Notably, the Company did not object to using a historical average. (R. p. 1057, line 22). This commonsense normalizing adjustment is also consistent with the methodology employed by the Commission in Order No. 2019-323 in Docket No. 2018-319-E. (R. p. 181). The evidence of record supports the Commission's decision to adopt this normalizing adjustment and set Blue Granite's embedded cost of storm recovery to the Company's adjusted 10-year average of storm costs rather than its 5-year average. The purpose of a test year is to accurately estimate expenses going forward. The Commission's decision on this adjustment properly accomplishes that important objective.

ORS does not contest or dispute the general rule that "recital of conflicting testimony followed by a general conclusion is patently insufficient to enable a reviewing court to address the issue." *Porter v. S.C. Pub. Serv. Comm'n*, 333 S.C. 12, 21, 507 S.E.2d 328, 332 (1998). However, with respect to this adjustment, the order's citation to ORS witness Bickley's rate case hearing testimony provides the Court with an evidence-based ability to review the basis for the Commission's decision. *See* (Commission Order No. 2020-306 at R. pp. 252, 307, 327). As is clear from witness Bickley's testimony, this is an appropriate regulatory adjustment. The parties' positions are not complicated, and the evidence of record is clear. *See* (R. pp. 1057-1058, 1103-1105); *see also* (R. pp. 1102, 1125-1129). The Commission's decision, as required, is supported by the substantial evidence of record: ORS reviewed the Company's past ten years of storm restoration costs using a ten-year average and after removing both the high and low values found the average yearly storm costs to be $28,320.15; ORS's method of normalizing storm costs is reasonably calculated to accurately reflect prospective costs. *See* (R. pp. 1101-1102).

The Company also asserts that ORS witness Bickley's testimony that a 10-year average is more accurate than a 5-year average is "of no probative value because it is not accompanied by an underlying showing of the evidentiary basis on which it relies." (Appellant's Br., p. 30). That claim is incorrect. Witness Bickley is quite clear that his recommendation is based on the Company's own actual historical storm costs. (R. p. 1103); *see also* (R. p. 1057). *See also Hamm v. S.C. Pub. Serv. Comm'n*, 309 S.C. 291, 294, 422 S.E.2d 115, 117 (1992) (finding substantial evidence where "the substance" of the recommendation was brought into the record). To the extent the Company seeks to challenge either the admissibility of witness Bickley's testimony or to dispute the weight to attach to it, that time has long passed. *See Webb v. CSX Transp., Inc.*, 364 S.C. 639, 655, 615 S.E.2d 440, 449 (2005) (holding contemporaneous objection to admissibility of certain evidence

was necessary to preserve issue for consideration on appeal); *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 39, 691 S.E.2d 135, 143 (2010) (same); S.C. Code Ann Regs. 103-849(A) ("Parties objecting to the introduction of evidence shall briefly state the grounds of objection at the time such evidence is offered."). No contemporaneous objection was raised by the Company.

The Company's final argument, that an appropriate normalizing adjustment based on a reasonable methodology for estimating prospective cost levels "represents an unconstitutional taking" (Appellant's Br., p. 31), is inconsistent with well-established ratemaking principles that have long been recognized by this Court, including in cases cited by the Company. *See, e.g., Parker v. Pub. Serv. Comm'n*, 280 S.C. 310, 312, 313 S.E.2d 290, 92 (1984); *Southern Bell Tel. & Tel. Co.*, 270 S.C. at 602, 244 S.E. 2d at 284.

ORS reasonably challenged the Company's requested recovery based on a 5-year average and recommended a 10-year average after removing the high and low values. The Commission reasonably accepted ORS's recommendation consistent with the substantial evidence of record and approved ratemaking principles and should be affirmed.

II. The Commission Appropriately Disallowed Recovery of Blue Granite's Costs to Upfit Its New Headquarters in Greenville, South Carolina, When It Stated It Would Not Seek Recovery of Rebranding Costs from Its Customers and Admitted Those Upfit Costs Were Incurred as Part of Its Rebranding.[5]

The Commission's approval of an adjustment of $495,206 to eliminate costs Blue Granite incurred to upfit the space it leased for its new headquarters in Greenville, South Carolina, should be affirmed. Blue Granite's former office was housed in a building it owned in Lexington County where approximately 43 percent of its customers live, while its new office is in Greenville County where only about 2.6 percent of its customers live. (R. p. 1113, lines 1-7). Substantial evidence

[5] While this is the second argument in ORS's Brief, it corresponds to the sixth argument made by Blue Granite Water Company in its Brief.

supports the Commission's determination that Blue Granite's rebranding decision to relocate to Greenville away from the bulk of its customers was unreasonable and the resulting cost of upfitting the new space the Company leased in Greenville should not be imposed on its ratepayer customers.

Blue Granite repeatedly pointed to employee retention issues as the driving force behind the move, as it asserted in the testimony of its own President, Donald Denton, that "[a]ttracting talent in the Columbia market ha[d] been extremely difficult due to the legacy brand issues in that market." (R. p. 877, lines 5-7). Mr. Denton further testified the legacy brand issue meant the Company did not have a good name and that the issue was caused by the Company itself. (R. p. 896, line 15-p. 897, line 8). On December 10, 2018, prior to the filing of the rate case, Blue Granite filed a letter with the Commission that it was sending to customers describing its rebranding from Carolina Water Service, Inc. to Blue Granite. (R. p. 1122, line 5-p. 1123, line 7) (R. pp. 1219-1220). This letter stated the Company was "refreshing our brand *at no cost to our customers* to reflect our legacy and to showcase our new direction." (R. p. 1122, lines 16-18) (R. pp. 1219-1220 (emphasis added)).

Even though Blue Granite represented to its customers that the "refreshing" of its brand would be at no cost to them, it then directly contradicted that representation by attempting to recover from customers through rates costs to upfit a new office that was part of its rebranding and necessitated by talent acquisition issues that it created in the first place. (R. p. 1122, lines 19-25). Blue Granite's own President acknowledged the Company's employee retention problems were caused by legacy brand issues that Blue Granite caused. (R. p. 877, lines 5-7) (R. p. 896, line 15-p.897, line 8). Aside from the office upfit costs, Blue Granite sought, through its Application for a rate increase, to have customers pay for other expenses associated with its rebranding, such as vehicle logo and decal expenses, new uniforms, and legal fees. (R. p. 1094, line 16-p. 1095, line

3) (R. p. 1095, lines 14-23) (R. p. 1096, line 16-p. 1097, line 3). Blue Granite agreed to the adjustments proposed by ORS removing these other rebranding expenses but opposed the removal of the Greenville office upfit expenses. (R. p. 1054, line 19-p. 1055, line 9).

As purported justification for the move, Blue Granite testified it considered CBRE data for three locations in making its decision: Greenville, Columbia, and West Columbia. (R. p. 877, lines 2-5). The total index score on the CBRE report for Greenville was 105, for Columbia was 103, and for West Columbia was 101. (R. p. 1111, lines 15-19). The CBRE data was generated using a 20-mile radius for Greenville and Columbia and a 10-mile radius for West Columbia. (R. p. 1111, lines 23-24). Although ORS requested it, Blue Granite was unable to provide CBRE data for West Columbia using a 20-mile radius because it no longer had access to the database. (R. p. 1112, lines 1-4). Consequently, it is not known what the total index score for West Columbia would have been using an equivalent radius to Greenville. Regardless, the CBRE reports state that "all scores above 100 indicate a positive attribute, while scores below 100 indicate a negative attribute. **Cost scores are inverted so that a score above 100 indicates a lower cost market than the national average.**" (R. p. 1111, lines 2-14) (R. pp. 1211-1217). The minimal difference between the CBRE scores, including only two points between Columbia and Greenville, was not such as to justify the high cost to relocate to and upfit a new office, particularly considering the move was caused by rebranding issues Blue Granite management created. (R. p. 1112, lines 11-23). Mr. Denton agreed "with ORS that the CBRE Total Index scores [were] not conclusively determinative as to which city [was] best suited for the Company." (R. p. 877, lines 10-11).

When asked to identify cost savings for customers resulting from the move from an office it owned to a leased space in Greenville, Blue Granite indicated it would save approximately $27,260 annually by removing costs such as water, sewer, electric, gas, landscaping, and property

taxes. (R. p. 1114, lines 1-7). However, this number is nowhere close to offsetting the $84,685 in additional annual rent expense for the new Greenville office.[6] (*Id.*)

The "ultimate burden of showing every reasonable effort to minimize . . . costs remains on the utility." *Utilities Servs. of S.C.*, 392 S.C. at 110, 708 S.E.2d at 763. Blue Granite failed to meet this burden. Its new location is in a historic building on Main Street in downtown Greenville. (R. p. 1114, lines 10-16). The Company spent $495,206 retrofitting the space, which only houses ten employees, including installing drywall, electrical lines, and telecommunication lines. (R. p. 875, lines 19-21). The Company provided no evidence that it evaluated the cost of other potential office locations in less prime locations that may have required less upfitting expenses, as Denton testified he did not know whether Blue Granite examined lease or upfitting costs for office spaces in other geographic locations. (R. p. 899, lines 8-19). Moreover, Denton relied upon a JLL Project and Development Services publication that he described as a "benchmark guide" to support the reasonableness of the upfit expenses. (R. p. 890, lines 4-19). However, the average fit out in that publication was intended to represent a fit out found in a typical Class A office building. (R. p. 891, line 21-p. 892, line 14). A Class A building was defined in the publication as "an above average building in a given market, with excellent finishes, building services, building systems and location. Rents for a Class A building are usually in the top third of the overall market, although this figure can vary by market." (*Id.*) Denton testified he would not consider the building

[6] ORS recommended a downward adjustment of $11,019 to the $84,685 annual rent expense for the Greenville office to correctly allocate lease expense for two employees in the Greenville office who are assigned to the Atlantic Division and for which Blue Granite indicated in discovery only 34.94 percent of their duties were applicable to Blue Granite. (R. p. 1091, lines 9-14). ORS did not recommend denying recovery of the remaining annual rent expense associated with the Greenville office. (R. p. 1115, lines 3-4). The Commission did not rule on the $11,019 adjustment ORS proposed but instead disallowed the entire amount of the annual Greenville office rent expense for the same reasons it denied recovery of the upfit costs.

where Blue Granite is headquartered to be a Class A building. (R. p. 892, line 15-p. 893, line 1). Therefore, the JLL guide upon which the Company chose to rely does not actually provide a record-based apples-to-apples comparison and is not an accurate benchmark that supports the reasonableness of the company requested upfit expenses.

Substantial evidence in the record supports the Commission's decision and is discussed in the Commission's Order No. 2020-306. (*See* Commission Order No. 2020-306, R. pp. 248, 296-299, and 337-338). The Commission relied upon the fact that Blue Granite's own President testified the employee retention problems, which were the result of legacy brand issues caused by Company management, were the driving reasons the Company decided to move its headquarters away from a substantial number of its own customers to Greenville, where very few customers are located. (Commission Order No. 2020-306, R. p. 298); (R. p. 896, line 15-p.897, line 8). The Commission correctly concluded Blue Granite's customers should not have to pay the substantial costs to upfit the new Greenville office, given the move was part of Blue Granite's rebranding efforts to address legacy brand problems the Company admits it created and Blue Granite's representation to its customers and the Commission that the refreshing of its brand would be at no cost to ratepayers.[7] (Commission Order No. 2020-306, R. p. 298).

[7] Blue Granite briefly discusses ORS witness Dr. Kyle D. Maurer Sr.'s experience and states his testimony regarding the reasonableness of the Greenville office upfit costs is of no probative value. (Appellant Brief, pp. 33-34). No contemporaneous objection was made to the admissibility of the testimony and evidence witness Maurer presented. Therefore, Blue Granite has not preserved any argument that the Commission erred in admitting and considering any of the testimony and evidence he presented. *See Webb*, 364 S.C. at 655, 615 S.E.2d at 449; *Austin*, 387 S.C. at 39, 691 S.E.2d at 143; S.C. Code Ann Regs. 103-849(A). Regardless, the Commission's decision primarily was based on Blue Granite's own acknowledgment that the move was necessary due to employee retention problems which were the result of legacy brand issues Blue Granite's management caused and Blue Granite's statement to its customers and the Commission that its rebranding would be at no expense to its customers.

III. The Commission Appropriately Limited Recovery of the Utility's Non-Revenue Water Expense When It Applied a Previously Used and Utility-Accepted Standard after Considering the Substantial Evidence of Record.[8]

ORS recommended to the Commission an adjustment of $251,311 to reduce purchase water expenses to limit Blue Granite's customers' responsibility for non-revenue water expense to 10 percent of the total amount of non-revenue water. (R. p. 1118, line 21-p. 1119, line 2). Non-revenue water is water that Blue Granite generates itself or purchases from a third-party, such as a municipal-owned system, to sell to its customers that is not accounted for through customers' billed usage. It is water Blue Granite cannot, and did not, establish on the record that its customers actually used or consumed. The cost to purchase water from third parties is an expense included in Blue Granite's proposed rates.[9]

ORS proposed a similar adjustment to limit Blue Granite's recovery from its ratepayers of non-revenue water from the purchase water deferral account to 10 percent. (R. p. 1107, lines 16-18) (R. p. 1121). The purpose of the deferral account is to record rate increases by third-party water and sewer treatment providers between rate cases. The total adjustment ORS proposed to the deferral account was $50,929 amortized over three years.[10] (R. p. 1107, lines 16-18) (R. p. 1121, n. 10).

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[8] While this is the third argument in ORS's Brief, it corresponds to the seventh argument made by Blue Granite Water Company in its Brief.

[9] The increasing cost of water purchased from third parties was a major aspect of Blue Granite's requested rate increase, as Company witness Denton testified 22.31 percent of the requested water rate increase was driven by third-party provider costs. (R. p. 874, lines 17-19). The record also reflects that cost of non-revenue water is likely to rise. *See* (R. p. 1052, line 12) (costs of purchased water from third-party providers "beyond the Company's control"); (R. p. 1056, lines 10-14) ("Third-party suppliers frequently adjust their rates"); *see also* (R. p. 872, lines 17-22) (R. p.1053, lines 1-12).

[10] In calculating the adjustment to the deferral account, ORS used the data provided by Blue Granite through discovery to calculate the aggregate non-revenue water across all subdivisions served by a third-party provider, which resulted in an aggregate calculation of 15.38% non-revenue water. (R. p. 1107, lines 19-22). This aggregate calculation was reasonable and conservative

Data Blue Granite provided to ORS indicated the following 21 subdivisions experienced greater than 10 percent non-revenue water during the twelve-month period ending November 30, 2019:

Subdivision	**Non-Revenue Water**
Hill and Dale	52.9%
Peachtree Acres	48.8%
Hidden Lakes	35.8%
Leon Bolt	35.3%
Westside Terrace	29.8%
Washington Heights	23.2%
Charleswood	21.5%
Stonegate (North Pines)	20.8%
I-20	20.2%
Hidden Lake	18.2%
Watergate/Spence Point/Mallard Shores	16.6%
Country Oaks	15.1%
River Hills	14.1%
Calhoun Acres	13.9%
Dutchman Shores	12.8%
Windward Point-Harbour Place	12.8%
Foxwood	12.5%
Clearview	12.1%
Farrowood	11.4%
Rollingwood	11.4%
Dutch Village/Dutch Creek	11.3%

because it included ten subdivisions that realized water gain during the twelve months ending November 30, 2019. (R. p. 1108, lines 5-9). Water gain means Company records indicated that Blue Granite sold more water to customers than the Company purchased from the third-party water provider. *Id.* This phenomenon of water gain highlights a flaw in the Blue Granite's data management, such as metering accuracy and subsequent water balance calculations. (R. p. 1108, lines 9-11). The 15.38 percent is lower than the aggregate percentage if only those subdivisions that realized non-revenue water over the same period were used to make the calculation. (R. p. 1108, lines 11-13).

(R. p. 1106, lines 3-7). Five of these subdivisions—Leon Bolt, Washington Heights, Charleswood, Stonegate (North Pines), and Country Oaks—were partially supplied by wells Blue Granite itself owned during the applicable time period. (R. p. 1118, lines 19-21). For these five subdivisions, ORS calculated its purchase water expense adjustment using the percentage of purchase water in the systems. *Id.* In other words, ORS did not propose an adjustment to the percentage of water that originated from Blue Granite-owned wells.

ORS's recommendation in this case was consistent with its recommendation in Blue Granite's prior rate case in which ORS also recommended limiting recovery of non-revenue water expense to 10 percent. (Docket Number 2017-292-WS, Commission Order No. 2018-345(A), R. p. 132); (R. p. 1107, lines 1-6). In that prior proceeding, there were only three subdivisions that had greater than 10 percent non-revenue water to which the adjustment applied. (Docket Number 2017-292-WS, Commission Order No. 2018-345(A), R. p. 132); (R. p. 1107, lines 1-6). Blue Granite did not oppose the adjustment in that proceeding, and the Commission approved it. (Docket No. 2017-292-WS, Commission Order No. 2018-345(A), R. p. 132); (R. p. 1107, lines 9-12) (R. p. 895, lines 10-15). Blue Granite in its testimony disputed the inclusion of certain subdivisions when comparing non-revenue water in this case and Blue Granite's 2017 rate case. (R. p. 882, line 10-p. 883, line 5). Even excluding the subdivisions Blue Granite disputed for comparison purposes, the number of subdivisions with more than 10 percent non-revenue water has tripled since the last rate case from three to nine. (R. p. 1118, lines 11-14). More than half of Blue Granite's subdivisions that purchased water from a third-party provider realized more than 10 percent non-revenue water. (R. p. 1118, lines 9-11).

ORS's recommendation, which the Commission accepted, was well-supported, consistent with the precedent the Commission set in Blue Granite's last rate case, appropriately insulated

ratepayers from non-revenue water impacts, and incentivized the Company to monitor and mitigate non-revenue water problems. (R. p. 1107, lines 7-12). The ORS recommendation also was consistent with the benchmark utilized in the past by the American Water Works Association ("AWWA"). (R. p. 1107, lines 12-13).

Blue Granite argued in response that the AWWA no longer recommends percentage thresholds. (R. p. 880, lines 9-10). Blue Granite asserted a "more reasonable approach than requiring all of a utility's systems to achieve a 10% non-revenue water target—and one that would be consistent with AWWA's recommendations—would be to set goals for each system and to evaluate the Company's efforts towards reducing non-revenue water." (R. p. 885, lines 1-4). However, Blue Granite Witness J. Bryce Mendenhall agreed the Company did not provide proposed subdivision-specific goals for the Commission to consider. (R. p. 894, line 25-p. 895, line 4). Furthermore, Blue Granite did not provide sufficient data to establish such goals. (R. p. 1119, line 18-p.1120, line 13). Blue Granite's Water Accountability Report provided information explaining the cause of only a small percentage of non-revenue water and many of the data fields for non-revenue water were empty. (R. p. 1116, line 17-p. 1117, line 5). For example, documented flushing events across all subdivisions served by a third-party water provider accounted for less than 1 percent of the combined total water input and combined total non-revenue water in these subdivisions over the twelve-month period ending November 30, 2019. (R. p. 1117, lines 16-19). Similarly, documented leak events across all subdivisions served by a third-party water provider accounted for less than 1 percent of the combined total water input and combined total non-revenue water in these subdivisions over the same period. (R. p. 1117, lines 19-22). The cause of the remaining combined total non-revenue water was not explained by Blue Granite's water audit data. (R. p. 1117, line 22-p. 1118, line 1). Moreover, while Blue Granite asserted the cost of conducting

leak detection studies would exceed the annual cost of non-revenue water for many of its subdivisions, Blue Granite did not clearly indicate whether the estimates it used in support of this assertion were a one-time or recurring cost whereas, left unaddressed, non-revenue water is a recurring cost that is increasing not decreasing which the Company originally sought to pass to its customers in its entirety leaving the utility free from the responsibility to properly manage its system. (R. p. 1119, lines 7-14) (R. p. 898, lines 2-7).

Absent Company-provided comprehensive water audit data, a single numeric threshold remains an appropriate and reasonable method to ensure customers are protected against non-revenue water and to incentivize Blue Granite to study and address the water loss issue while recognizing an acceptable level of non-revenue water may occur. (R. p. 1119, line 20-p. 1120, line 13). Blue Granite's argument on appeal that percentage thresholds are arbitrary is directly contradicted by the fact Blue Granite itself proposed a 20 percent non-revenue water threshold should the Commission have deemed a particular threshold warranted. (R. p. 886, lines 11-15). In support of its proposed 20 percent threshold, Blue Granite also acknowledged and cited other jurisdictions that apply various percentage thresholds, including North Carolina, Florida, and Tennessee. (R. pp. 886-887).

Blue Granite agreed its proposed 20 percent threshold would be double the amount of non-revenue water the Commission permitted to be recovered from customers in the last rate case. (R. p. 895, lines 5-15). Blue Granite testified to projects undertaken to reduce non-revenue water but provided no quantifiable support for how those projects have reduced actual non-revenue water. Again, even if the subdivisions over which Blue Granite took issue in its testimony are removed from a comparison between this case and Blue Granite's prior rate case, the number of subdivisions with more than 10 percent non-revenue water has increased from three to nine. In addition, one

subdivision completely supplied by purchased water had in excess of 50 percent non-revenue water, another had nearly 50 percent, and a third had over 35 percent. (R. p. 1106, lines 3-7).

ORS presented evidence that overcame any claim or presumption of reasonableness, and the "ultimate burden of showing every reasonable effort to minimize . . . costs" remains with Blue Granite. *Utilities Servs. of S.C.*, 392 S.C. at 110, 708 S.E.2d at 763. The Commission acted appropriately in rejecting Blue Granite's inchoate proposal of system-specific goals, as this proposal effectively would have resulted in Blue Granite being allowed to recover all of its non-revenue water from customers and would have rewarded Blue Granite for not providing or supporting any actual system-specific proposals. The Commission correctly concluded that non-revenue water is not just a "cost of doing business" and allowing Blue Granite to recover all non-revenue water would be unreasonable and harmful to customers. (R. p. 1069, lines 23-25). The Commission also acted properly in rejecting Blue Granite's alternate proposal of a 20 percent threshold.[11]

Finally, the Commission's explanation of its decision on the issue was not limited to the language Blue Granite quoted from page 83 of Commission Order No. 2020-306. (Appellant's Brief, p. 38). Rather, the Commission stated Blue Granite had not provided subdivision-specific proposals, despite its own suggestion that the Commission should adopt such proposals. (Order No. 2020-306, R. p. 246). The Commission further concluded that permitting recovery of all non-revenue water was unreasonable and did not adequately incentivize Blue Granite to reduce

[11] Blue Granite makes a general reference to ORS witness Maurer's testimony regarding the 10 percent threshold and states opinion testimony without an underlying showing of the evidentiary basis on which it relies is of no probative value. (Appellant's Brief, p. 39). No contemporaneous objection was made to the admissibility of the testimony and evidence witness Maurer presented. Therefore, Blue Granite has not preserved any argument that the Commission erred in admitting and considering any of the testimony and evidence he presented. *See Webb*, 364 S.C. at 655, 615 S.E.2d at 449; *Austin*, 387 S.C. at 39, 691 S.E.2d at 143; S.C. Code Ann Regs. 103-849(A).

nonrevenue water losses. (*Id.*) The Commission also explained Blue Granite had not demonstrated that the threshold should be set at 20 percent instead of 10 percent.[12] (*Id.* at R. pp. 246-247).

For the aforementioned reasons, the adjustments ordered by the Commission to limit recovery of non-revenue water from Blue Granite's customers to 10 percent should be continued and affirmed.

CONCLUSION

The provisions of Commission Order Nos. 2020-306 and 2020-641, which are discussed above, were based on reliable, probative, and substantial evidence on the whole record. Blue Granite has failed to carry its burden of convincingly proving that the Commission's Order Nos. 2020-306 and 2020-641 are clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence of the record as a whole.

Respectfully submitted,

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[12] The pages from Commission Order No. 2020-306 cited here appear in the Executive Summary of that Order. The Commission stated the Executive Summary shall not be controlling if it conflicts with the remainder of the Order. (Commission Order No. 2020-306, R. p. 243). Because the Commission's discussion of the non-revenue water issue later in the Order does not conflict with the Executive Summary, the latter can be relied upon and cited here.